IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

OP.No. 8383 of 1996(W)

PETITIONER:

KAIRALI ESTATES EXPORTS (P) LTD.,
KARAPPARA, PADAGIRI.P.O - 678 509,
PALAKKAD DISTRICT.

BY ADV.

RESPONDENTS:
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1. **THE DIVISIONAL FOREST OFFICER, NENMARA.**

2. **STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, TRIVANDRUM.**

3. **CHIEF CONSERVATOR OF FORESTS, TRIVANDRUM.**

BY GOVERNMENT PLEADER SRI. M.B. PRAKASH.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/03/2007,ALONG WITH O.P. NO. 9016/1996 AND CONNECTED CASES,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 13983/1996 IN O.P. NO. 8383/1996

DISMISSED

SD/- J.B. KOSHY, JUDGE,

01/03/2007. **SD/- T.R.RAMACHANDRAN NAIR, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. C4-33/92 DTD. 27/03/1993 ISSUED BY THE R.1.

EXT.P.2: COPY OF THE LIST OF TREES FURNISHED BY THE PETITIONER AND CORRECTED BY THE FOREST RANGE OFFICER DTD. 31/01/1996.

EXT.P.2.B: COPY OF THE APPLICATION SENT BY THE FOREST RANGE OFFICER TO THE R.1.

EXT.P.3: COPY OF THE MEMO DTD. 26/03/1995 SENT BY THE R.3. TO THE R.2.

EXT.P.4: COPY OF THE REVISION OF SEIGNIORAGE RATE FOR TIMBER, FIREWOOD AND OTHER FOREST PRODUCE RATE PROPOSED FOR 1996-97 FIXED BY THE R.3.

EXT.P.5: COPY OF THE DEED NO. 4/1854 DT. 02/07/1878.

RESPONDENT'S EXHIBITS & ANNEXURES:

EXT.R1.A: COPY OF THE LEASE DEED NO. 44/1084 DTD. 02/07/1878.

EXT.R1.B: COPY OF THE RESERVE FOREST NOTIFICATION PUBLISHED IN COCHIN GOVERNMENT GAZETTE VOL. XLIII DTD. 08/05/1909.

EXT.R1.C: COPY OF THE RESERVE NOTIFICATION NO. 65 PUBLISHED IN COCHIN GOVERNMENT GAZETTE DTD. 11/02/1933.

EXT.R1.D: COPY OF THE RESERVE FOREST NOTIFICATION OF KARADKA RESERVE FOREST DTD. 10/08/1904.

EXT.R1.E: COPY OF THE RESERVE FOREST NOTIFICATION OF ADOOR RESERVE FOREST DTD. 07/02/1906.

O.P. NO. 8383/1996:

EXT. R1.F: COPY OF THE PROCEEDINGS OF THE DIWAN OF COCHIN, LAND REVENUE BRANCH, COCHIN NO. 909/M. 676 DTD. 19/07/1900.

EXT.R1.G: COPY OF THE GOVT. LETTER NO. 10410/B1/92/F & WLD DEPARTMENT DTD. 05/09/92.

EXT.R1.H: COPY OF THE FORM 1 REPORT AND MAHAZAR IN O.R. 13/96 OF NELLIAMPATHY RANGE.

EXT.R1.I: COPY OF THE FORM 1 REPORT AND MAHAZARS IN O.R. 30/96 OF NELLIAMPATHY RANGE.

EXT.R1.J: COPY OF THE G.O. (RT). NO. 374/96 F & WLD DTD. 17/10/96.

EXT.R1.K: COPY OF THE LETTER NO. FU (2) 53387/95 DTD. 26/03/96.

ANNEXURE I - COPY OF THE LETTER NO. 10410/B1/92/F & WLD FOREST & WILD LIFE (B) DEPARTMENT DTD. 05/09/1992.

//TRUE COPY//

prv.

J.B. Koshy & T.R. Ramachandran Nair, JJ.

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O.P.NOS. 8383, 9016, 10987 & 11030 OF 1996

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Dated this the 1st day of March, 2007

JUDGMENT

Koshy, J.

The main question to be decided in these cases is based on the right of the private party to maintain property in the forest area. On the basis of the decision of the Supreme Court in **Godavarmen Thirumulpad v. Union of India** (AIR 1997 SC1228) the Empowered Committee is considering these matters. We are of the opinion that in these circumstances, it is not proper for us to pass any order on merits on this aspect. However, we reserve the right of the petitioners to assail the decision of the Empowered Committee in case it is against the petitioners according to law.

2. The second question is whether petitioners are liable to pay sceniorhage for the timber removed from the land. The question whether sceniorhage is payable, is decided against the petitioners by the Honourable Supreme Court. It is for the District Collector to decide the sceniorhage rate and determine the amount payable. If the final decision of the District

Collector is against the petitioner, the petitioners are free to challenge the same.

With that observations, all the original petitions are disposed of.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

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J.B. Koshy & T.R. Ramachandran Nair, JJ.

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O.P.NOS. 8383, 9016, 10987 &
11030 OF 1996

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JUDGMENT

1st day of March, 2007